



Attorney's Docket No.: 10449-027001 / P1S2000216US

IFW GP 2653

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Koji Hayashi
Serial No. : 09/718,164
Filed : November 21, 2000
Title : DATA RECORDER

Art Unit : 2653
Examiner : Tan X. Dinh

Mail Stop Amendment

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY TO ACTION OF NOVEMBER 23, 2005

In reply to the Office Action of November 23, 2005, Applicant submits the following remarks.

The Examiner has provisionally rejected claims 1-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of application no. 11/178,889 (the '889 application) and has so rejected claims 1-13 over claims 1-8 of application no. 10/814,356 (the '356 application).

Applicant does not agree that the pending claims of this application are not patentably distinct from those in the '889 application or the '356. However, Applicant points out that the provisional rejection is inappropriate, since it is the only rejection remaining to the pending claims. The MPEP, §804 I.B makes clear that a provisional rejection under these circumstances is improper:

The 'provisional' double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in >at least< one of the applications.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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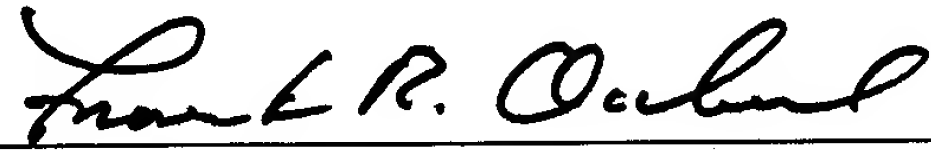
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No fee is believed to be due. If this is incorrect, please apply any other charges or credits to deposit account 06-1050, referencing 10449-027001.

Respectfully submitted,

Date: February 3, 2006



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